IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

Crl.MC.No. 2444 of 2005()

CC.85/2005 of JUDL.MAGISTRATE OF FIRST CLASS-I, KOLLAM

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PETITIONER:

ANTONY.J., P.D.TEACHER,
GOVERNMENT U.P.SCHOOL,
MUKKOODU, KOLLAM.

BY ADV. SRI.C.P.SUDHAKARA PRASAD (SR.)
SRI.ELVIN PETER P.J.
SRI.S.RAMESH
SRI.P.N.SANTHOSH
SRI.NAVEEN.T
SRI.T.G.SUNIL (PRANAVAM)
SRI.C.X.ANTONY BENEDICT
SMT.POOJA SURENDRAN

RESPONDENTS:

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1. STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

2. SULABHA.L., P.D.TEACHER,
GOVERNMENT U.P.SCHOOL, KUREEPUZHA,
PERINADU P.O., KOLLAM.

R2 BY ADV. SRI.C.C.THOMAS
R1 BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 13/02/2007, A/W. CRMC 208 OF 2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.Nos. 2444 of 2005 &
208 of 2007

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Dated this the 13th day of February, 2007

O R D E R

The petitioners in these Crl.M.Cs. are co-accused (accused 1 and 2) facing trial in C.C.No. 85 of 2005 pending before the J.F.C.M. - I, Kollam.

2. The crux of the allegations against the first accused is that he indulged in culpable overt acts against CW1 i.e. the common second respondent herein, while he was engaging a class in Govt. U.P.School, Kureepuzha on 16.9.2004. He was allegedly taken out of the class room, intimidated and abuses showered on him. One of the objectionable words used by the first accused allegedly is that he will make use of a cassette which the second accused had handed over to the first accused. It is on this allegation that final report has been filed alleging commission of offence punishable under Sections 510, 294(b) and 506(ii) r/w. 34 I.P.C. The learned counsel for the petitioners/accused contends that the allegations, even if accepted in toto, cannot reveal any justifiable allegation of culpable conduct

against either of the two petitioners. In these circumstances it is prayed that the proceedings initiated against them may be quashed.

3. The learned Prosecutor has also been heard. To me, it appears that there must necessarily be a distinction between the first and second accused while considering these cases. As against the first accused specific overt acts are alleged that he had taken the defacto complainant/second respondent who was engaging a class as a teacher of the School out of the class room. He was allegedly intimidated and abused by the first accused.

4. At this stage and with the available inputs, it will not be proper for this court to come to a conclusion that the allegations against the first accused, even if accepted in toto, will not reveal any offence. As to what exactly would be the offence revealed even if the allegations were accepted need not be gone into by this Court at this stage. The trial court must consider and raise appropriate allegations/charges. But so far as the second accused is concerned, I find there is absolutely no allegation, which even if accepted, will expose him to culpability for any offence. While threatening the second respondent the first accused allegedly used words to suggest that the second accused had handed over a cassette to the first accused. This by itself cannot mulct the second accused with any vicarious

liability with the help of Section 34 I.P.C. nor expose him for any principal offence allegedly committed. In these circumstances I am satisfied that while the claim of the second accused is bound to succeed the claim of the first accused cannot.

5. In the result:

(1) Crl.M.C. 2444 of 2005 is dismissed. But I may hasten to observe that dismissal of this Crl.M.C. will not in any way fetter the rights of the petitioner/first accused to raise all appropriate and relevant contentions to claim discharge/acquittal before the learned Magistrate.

(2) Crl.M.C. 208 of 2007 is allowed. C.C.No.85 of 2005 in so far as it relates to the petitioner/second accused is hereby quashed.

(R. BASANT)
Judge

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